

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**KURT D. ELLISON, RESPONDENT**

**vs.**

**O'REILLY AUTOMOTIVE STORES, INC., APPELLANT**

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DOCKET NUMBER WD77728

DATE: March 24, 2015

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Appeal from:

The Circuit Court of Platte County, Missouri  
The Honorable James Walter Van Amburg, Judge

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Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, James E. Welsh, Judge and Gary D. Witt,  
Judge

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Attorneys:

Joseph K. Eischens, for Respondent

Randall W. Brown, Co-counsel for Respondent

William C. Martucci, for Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**KURT D. ELLISON, RESPONDENT**

**v.**

**O'REILLY AUTOMOTIVE STORES, INC., APPELLANT**

WD77728

Platte County, Missouri

Before Division Three: Victor C. Howard, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

O'Reilly Automotive Stores, Inc. appeals the judgment of the trial court awarding Kurt Ellison \$2,000,000 in punitive damages in his action under the Missouri Human Rights Act for employment discrimination based on disability. It contends that (1) Mr. Ellison did not make a submissible case for punitive damages, (2) the punitive damages award was the result of a constitutionally invalid verdict, and (3) the punitive damages award was excessive.

**AFFIRMED and REMANDED.**

**Division Three holds:**

(1) Where evidence was offered that O'Reilly Automotive management and HR discussed and considered Mr. Ellison's disability during the time he was being disciplined and ultimately demoted, that its reasons for Mr. Ellison's discipline leading up to his demotion changed over time, that during his discipline, his store had consistently good sales, which was O'Reilly Automotive's most important business objective, that Mr. Ellison's performance reviews were similar to those of other store managers in the district that were not demoted out of leadership positions, and that O'Reilly Automotive began to gather documentation after the demotion of customer complaints about Mr. Ellison's speech and about his falling in the store, the evidence was sufficient to allow a reasonable jury to find that it was highly probable that O'Reilly Automotive's conduct was outrageous because of an evil motive or reckless indifference. The trial court did not err in submitting punitive damages to the jury.

(2) Where the two stages of the bifurcated trial created separate jury issues and the verdict forms provided for separate sets of signatures by jurors for the return of the verdict in the first stage of trial for determination of liability for compensatory damages, the amount of compensatory damages, and liability of a defendant for punitive damages and the return of the verdict in the second stage for the assessment of punitive damages, the punitive damages verdict did not violate the general rule that nine of twelve jurors must agree on both liability and damages.

(3) Where O'Reilly Automotive's conduct in demoting Mr. Ellison was outrageous, Mr. Ellison went from earning a salary plus commissions, bonuses, and stock options to \$12 an hour and has not had a raise since his demotion, O'Reilly Automotive is a large corporation employing 62,000 people with assets in excess of \$100 million, the \$2 million award accomplished the purposes of the punitive damages and was related to the wrongful act, and the award was in line with comparable cases, the trial court did not err in failing to order a remittitur of the punitive damages award.

**Opinion by: Victor C. Howard, Judge**

Date: March 24, 2015

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